UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Christopher Beltran

v. Civil No. 04-cv-071-JD
Opinion No. 2006 DNH 020

Michael Bernier et al.

O R D E R

The parties have filed a number of motions in limine seeking to preclude certain evidence at the upcoming trial of Christopher Beltran's claim that the defendants, a number of correctional officers, subjected him to excessive force during his detention at the Hillsborough County House of Correction (the "HCHC"). The court's ruling on each of those motions follows.

At the outset, however, the court notes that none of these motions contains the certification required by Local Rule 7.1(c), i.e., that the moving party has made a good faith effort to obtain its adversary's concurrence in the relief sought.[1] The purpose of this rule is to prevent unnecessary motion practice

[1]Beltran's motions assert that the defendants' counsel "objects to the relief sought," without attesting to any attempt at achieving consensus; for their part, the defendants take the position that their motions are exempt from L.R. 7.1(c) because they are "dispositive of an important evidentiary matter." While the rule does not apply in the case of a "dispositive motion," the ordinary meaning of that phrase does not extend to motions in limine, but to motions to dismiss, for summary judgment, and the like. See, e.g., 14 James Wm. Moore et. al., Moore's Federal Practice § 72.02[3], at 72-9--72-11 (3d ed. 1997 & 2005 supp.). Motions in limine are not "dispositive" under L.R. 7.1(c).

from taxing the resources of the parties and the court. Here, based on the court's analysis of the motions, adherence to the rule could have achieved this effect by significantly narrowing the issues presented in the motions or possibly even eliminating the need for some of them in their entirety. Counsel are reminded that they have an obligation to attempt to resolve disputes on their own before seeking the court's intervention.

I. The Defendants' Motion to Preclude Rule 404(b) Evidence

The defendants have filed a motion in limine stating that Beltran "will likely attempt to introduce any claimed assaults, criminal acts, convictions or accusations against other corrections officers as well as state and federal investigations against HCDOC or INS issues. None of this evidence, if it is even reliable or in existence, is relevant . . . . Instead, it is unduly prejudicial . . . ." Mem. Supp. Mot. at 2. The defendants, however, do not identify the allegedly objectionable evidence any further.

In his objection, Beltran argues that "the motion does not state with sufficient particularity what evidence it seeks to exclude . . . this court cannot rule on the admissibility of [Fed. R. Evid. 404(b)] evidence in this pretrial vacuum." Obj. ¶ 2. The court agrees. While Rule 404(b) prohibits the use of evidence of prior acts "to prove the character of a person in

order to show action in conformity therewith," it specifically makes such evidence admissible for a variety of other purposes. Rule 404(b), then, does not permit a blanket pretrial ruling that any evidence of any prior act by any defendant is inadmissible, let alone an abstract determination that the prejudicial effect of such evidence will outweigh its probative value. The defendants' motion is therefore denied. Their objections to whatever prior act evidence Beltran offers, if any, will be addressed in the proper context at trial.

II. The Defendants' Motion to Preclude Evidence of Other Inmate Complaints

Similarly, the defendants have moved "to [p]reclude Plaintiff or his witnesses from mentioning claims brought by other specific individuals against HCDOC and its staff," Mot. at 1, particularly "Brian Armstrong, Robert Murray, Robert Boudreau, Jason Suprenant, Dante Baker, Antonio King, Nicholas Champagne, Terry T. Thomas, Michael DeAngelis, Efrain Perez, Eric Searles, David Coulombe, Palacio Paladin and Richard West and any of their claims against the County." Mem. Supp. Mot. at 2. The defendants argue that "[i]n all but one case there has been no finding of liability against HCDOC," and that even in that case the incidents at issue "are wholly unrelated and irrelevant to the instant claims." Id.

Beltran responds that he "was abused because he would not shut up about staff mistreatment of other inmates" and that he

should therefore be permitted to adduce evidence of other inmates' complaints in support of this theory. Obj. ¶ 5. Nevertheless, he acknowledges that most of the inmates named in the defendants' motion had left the HCHC before he even arrived and that their complaints would therefore be irrelevant. Beyond that, the court cannot determine at this point whether the complaints of any other inmate might be relevant to Beltran's theory, as he contends, or whether the prejudicial effect of those complaints would outweigh their probative value, as the defendants contend. The defendants' motion is therefore denied. Their objections to any evidence of complaints by other inmates will be addressed in the proper context at trial.

III. Beltran's Motion to Exclude His Disciplinary Record

Beltran has moved to "exclude from trial evidence of [his] disciplinary offenses, whether from the jail or the state prison, because they are rendered inadmissible by" Fed. R. Evid. 404(b). Mot. at 1. The defendants have not responded to this motion. Beltran, however, concedes that "he may open the door to admission of some disciplinary reports depending on what claims he pursues at trial or during his testimony." Id. ¶ 4. Indeed, Beltran's excessive force claim arises out of a series of incidents where the defendants restrained him for allegedly violating HCHC disciplinary rules. As with the defendants' motions in limine seeking to exclude Rule 404(b) material, the

court cannot determine at this point which aspects of Beltran's disciplinary record might be admissible and which might not. Beltran's motion is therefore denied. His objections to any evidence of his disciplinary infractions will be addressed in the proper context at trial.

IV. The Parties' Motions Concerning Beltran's Criminal Record

The defendants have filed a "Motion in Limine to Notice Its [*sic*] Intent to Use Plaintiff's Criminal History at Trial," seeking permission "to introduce aspects of Plaintiff's criminal history at trial." Mem. Supp. Mot. at 2. While the motion discusses Fed. R. Evid. 609(a), which permits evidence that a witness has been convicted of certain crimes to be admitted under certain circumstances for the purpose of impeachment, the motion also argues that Beltran's "crimes explain the basis, in part, for [his] classification in maximum security" as well as the defendants' "fear for their safety and the overall safety of the facility."[2] Mem. Supp. Mot. at 2. Beltran was detained in the HCHC while awaiting trial on two charges of second-degree murder. He was subsequently convicted of those charges.

[2]Beltran's complaint included a claim that his classification as a maximum security inmate violated his right to due process. The court has since dismissed that claim without prejudice, however, due to Beltran's failure to exhaust his administrative remedies.

Although Beltran has not filed an objection to the motion, he has filed his own motion in limine on this issue. Beltran acknowledges that his murder convictions are admissible, but seeks to limit any evidence of his criminal history to the "facts of the convictions, but none of the underlying facts." Obj. ¶ 4. In support of this relief, Beltran relies on Rule 609(a), under which "the impeaching party is generally limited to establishing the bare facts of the conviction: usually the name of the offense, the date of the conviction, and the sentence." 4 Jack B. Weinstein & Margaret F. Berger, Weinstein's Federal Evidence § 609.20[2], at 609-57--609-58 (2d ed. 1997 & 2005 supp.) (footnote omitted); accord United States v. Pandozzi, 878 F.2d 1526, 1534 (1st Cir. 1989). Rule 609(a), however, "does not govern the substantive use of prior convictions," e.g., to show intent or knowledge. Weinstein & Berger, supra, § 609.02[2], at 609-9 (footnote omitted).

As noted, it is unclear from the defendants' motion whether they intend to use Beltran's criminal history to impeach him or for some other, substantive purpose. The defendants have not responded to Beltran's motion. It is therefore unclear whether Rule 609(a) will operate to restrict the proof of that history to the convictions themselves. In any event, because Beltran acknowledges that his murder convictions are admissible, the defendants will not be restricted from using "the bare facts" of

those convictions as evidence. The defendants shall not, however, present any of the underlying facts of the murder convictions, or any evidence of Beltran's other convictions, without seeking a ruling from the court beforehand. The parties' motions in limine on this issue are therefore granted in part and denied in part.

V. Beltran's Motion for a Spoliation Instruction

Finally, Beltran has moved for "a 'spoliation instruction' to the jury that it may draw an adverse inference from the jail's failure to preserve video recordings of some events relevant to this lawsuit." Mot. at 1. Beltran notes that, in January 2004, the HCHC installed security cameras trained on the common areas of the unit where he was housed at that time. He asserts that the events underlying part of his excessive force claim occurred in those common areas, e.g., the defendants transported Beltran through them on the way to the restraint chair. He also asserts that, through counsel, he asked the defendants to preserve videotaped footage depicting the events at issue, but that he has since learned that the tapes have been destroyed.

"[A] trier of fact may (but need not) infer from a party's obliteration of a document relevant to a litigated issue that the contents of the document were unfavorable to that party." Testa v. Wal-Mart Stores, Inc., 144 F.3d 173, 177 (1st Cir. 1998). To

permit such an inference, however, its proponent "must proffer evidence sufficient to permit the trier of fact to find that the target knew of (a) the claim (that is, the litigation or the potential for litigation), and (b) the document's potential relevance to that claim." Id.

Beltran's motion suggests that these prerequisites have been met because, while the defendants characterize the destruction of the video as inadvertent, they have been careful to preserve similar video "when it benefitted the state or jail . . . ." Mot. at 2. Whether Beltran can adduce facts to support this theory, and whether the theory, in turn, supports a spoliation instruction, are matters that are properly addressed in the context of the trial. See Blinzler v. Marriot Int'l, Inc., 81 F.3d 1148, 1159 (1st Cir. 1996) (noting that propriety of spoliation instruction depends on totality of circumstances). Beltran's motion is therefore denied without prejudice to renew his request for a spoliation instruction at the appropriate time.

Conclusion

For the foregoing reasons, the defendants' motions in limine seeking to preclude evidence of prior acts (document no. 32) and complaints by other inmates (document no. 41) are denied. Beltran's motions in limine seeking to preclude evidence of his disciplinary record (document no. 37) and for a spoliation

instruction (document no. 38) are also denied. The defendants' motion to use Beltran's criminal history (document no. 34) and his motion to limit that evidence (document no. 36) are granted in part and denied in part as more fully explained in this order.

SO ORDERED.

Joseph A. DiClerico, Jr.
United States District Judge

February 22, 2006

cc: John A. Curran, Esquire
Elizabeth L. Hurley, Esquire
Michael J. Sheehan, Esquire